

**PPP Insulation Company and International Association of Heat & Frost Insulators & Asbestos Workers, Local Union 22, AFL-CIO. Case 16-CA-17106**

March 18, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On September 19, 1995, Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.<sup>1</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, PPP Insulation Company, Houston, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The General Counsel has moved to strike portions of the Respondent's exceptions and attachments to its brief. To the extent that certain documentation appended to the Respondent's brief is outside the record developed at the hearing, we grant the General Counsel's motion, without prejudice to the Respondent's ability to introduce additional evidence pertaining to the remedy at the compliance stage of the proceeding. In all other respects, the General Counsel's motion is denied.

*Nadine Littles, Esq. and Tamara J. Gant, Esq., for the General Counsel.*

*Isaac Price II, Owner, of Houston, Texas, for the Respondent, PPP Insulation.*

*Patrick M. Flynn, Esq., of Houston, Texas, for the Charging Party, Local 22.*

**BENCH DECISION**

RICHARD J. LINTON, Administrative Law Judge. This is a constructive discharge case. At close of the 1-day trial in Houston, Texas, on August 22, 1995, I rendered a bench decision in favor of the Government on all counts, thereby finding violations of 29 U.S.C. § 158(a)(1) and (3). This certification of that bench decision, along with the order which appears below, triggers the time period for filing an appeal (exceptions) to the National Labor Relations Board. The authority for issuing a bench decision, and the format I generally follow for this certification, appears in the first reported bench decision, by Administrative Law Judge Robert T. Wallace, in *Sylvan Industrial Piping*, 317 NLRB 772 (1995).

For the reasons stated by me on the record at the close of the hearing, and by virtue of the "very strong" prima facie case established by the General Counsel and the Charging

Party, a case not credibly rebutted by PPP Insulation (PPP), I found that PPP violated Section 8(a)(1) of the Act by telling employees not to speak with representatives of the Union (two counts, both admitted, with one by Owner Isaac Price himself), and by coercively interrogating employees (again, by owner Price). I found that PPP violated Section 8(a)(3) of the Act when Owner Price (angered that Gabino Carrizal had filed a prevailing wage claim under Texas law) told Carrizal, on October 7, 1994, that because Carrizal had filed the claim, Price was reducing his weekly hours from 40 to 32 beginning the following week. Carrizal's protest that he could not live on the reduced hours was rebuffed, so Carrizal quit. I order PPP Insulation to reinstate Gabino Carrizal and to make him whole, with interest. I certify the accuracy of the portion of the trial transcript (Tr. 221 through 223) containing my decision, and I attach a copy of that portion as "Appendix A."

**CONCLUSION OF LAW**

Based on the record, I find that the Board has statutory and discretionary jurisdiction; that Respondent PPP is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that PPP violated the Act in the particulars and for the reasons stated in the bench decision; and that its violations have affected and, unless permanently enjoined, will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Pursuant to my request at close of the hearing, the General Counsel submitted a proposed order and proposed notice to employees.

On these conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

**ORDER**

The Respondent, PPP Insulation Company, Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing its employees not to speak with representatives of a union.

(b) Coercively interrogating any employee about union support or union activities.

<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Telling its employees that their work hours are being reduced because of their activities in support of a union.

(d) Discharging or constructively discharging its employees because they seek the assistance of a union regarding terms and conditions of employment.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Gabino Carrizal immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify the Gabino Carrizal in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its office and jobsites in Houston, Texas copies of the attached notice marked "Appendix B."<sup>2</sup> If there are no posting facilities at the jobsites, mail a copy of the attached notice to each employee who has been on the payroll of PPP Insulation Company at any time between August 15, 1994, to the present. Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX A

My decision will be for the Government on all issues alleged. The credibility I credit to General Counsel's witnesses. This shows—in addition to the allegations of 8(a)(1) allegations as alleged in the complaint, a reduction to 32 hours, and that it was for the purpose of retaliation.

Mr. Price, according to credited testimony, actually came and showed him the paper. He said, I am giving you 32 hours because you signed this paper. It is pretty clear that

the evidence really leaves no room for doubt on that point. And evidence shows that overtime then started being worked after that on other jobs.

And I find also that Mr. Gabino Carrizal would have been retained at the 40 hours had it not been for that wage claim that he filed. I find that this is a constructive discharge case, that it was designed to penalize him for that wage claim that he filed, and to make matters tough for him so that he would leave because of the union matter. Prima facie case is very clear and very strong, and the Company has not shown that it would have reduced Mr. Carrizal's hours absent his prevailing wage complaint.

That is my decision. I will—when the record is produced—delivered in ten days, I will prepare a decision similar to that which appears in *Sylvan Industrial Piping*, 317 NLRB, No. 102 on May 31, 1995 [317 NLRB 772 (1995)].

And perhaps General Counsel can furnish a copy of that decision, perhaps by mail. If you would just mail Mr. Price one so that he will have a copy of what I was referring to, I would appreciate it. It is—the only purpose is it just shows a little format that I will be looking at for guidance.

MS. GANT: Very well, Your Honor.

JUDGE LINTON: And I would suggest that the General Counsel forthwith submit a proposed order and notice particularly because of the—I want to make sure the wording doesn't interfere with the compliance matter—whatever is going to take place on any compliance matter with respect to journeymen, that sort of thing. I don't want to get involved on that. But you won't need the transcript to send that to me, that proposed order, so I need a proposed order and notice right away because I will need—as soon as the record comes in to get this order done up.

MS. GANT: Are we talking overnight or just regular mail or—

JUDGE LINTON: No, not overnight. Within the next few days. If you can get it out by the end of the week, though, I would appreciate it.

MS. GANT: Very well.

JUDGE LINTON: And Mr. Price, you may appeal. That will be dated from the date that my written decision issues. The written decision will just incorporate the pages of the transcript where I have now described my decision on the record here. And that will be—the procedure that you would follow on that is set forth in the Board's rules and regulations where you appeal to the Board from my decision which I will issue once I have received the record. and the record doesn't come in—the transcript doesn't come to me for another—well, it will probably be two weeks before I get it.

Are there any questions?

MS. GANT: No, Your Honor.

JUDGE LINTON: I appreciate the cooperation that the parties have shown, and I say best of luck to everyone. It is not too late, I suppose, for the parties to discuss a settlement. So—at any rate, there being nothing further, the hearing is closed. Off the record.

(Whereupon, at 3:25 p.m., the hearing was concluded.)

## APPENDIX B

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell you not to speak with representatives of a union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT tell you that your work hours are being reduced because you, with the assistance of a union, file pre-

vailing wage claims or engage in other protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting, or of obtaining the assistance concerning terms and conditions of employment, International Association of Heat & Frost Insulators & Asbestos Workers Local Union 22, or of any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Gabino Carrizal immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Gabino Carrizal that we have removed from our files any reference to the discharge or other discrimination against him and that the discharge will not be used against him in any way.

PPP INSULATION COMPANY